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Simon Drugda

—Simon Drugda, PhD Candidate at the University of Copenhagen

The Speaker of the Slovak Parliament announced the date of the general election for February 29, 2020. This upcoming election will be a high-stakes game because of the popular extreme-right parties on the rise, rampant disinformation on social media and uncertainty about the election-silence period. It is difficult to predict.

One candidate, however, is sure to lose something whatever the outcome. Štefan Harabin, a controversial Supreme Court judge, will run as the leader of his newly procured party that goes by the name “Homeland.” The election will cost Harabin his office, because of the new legislation, which is meant to prevent judges from swinging back and forth between politics and law. The new rules say that judges have to give up their office to run for parliamentary elections. This contribution reviews the rules on the political activity of judges in Slovakia from 1993 onwards to contextualise the change.

Historical Development of Regulation on Judges in Slovak Politics

The regulation of political activities of judges became progressively stricter in Slovakia over time. Until the turn of the century, there were almost no restrictions on the political activity of judges or their membership in political movements and parties. Judges could freely exercise their right to be elected by running in parliamentary, presidential, and local elections. Only in the case that the judge was elected, would her judicial function be suspended for the term of the elected office.^[1] If her candidacy were unsuccessful, however, the judge would continue adjudicating as if nothing happened. Before the year 2000, judges could even campaign without suspension from the bench.

It is not entirely clear why the legislator decided to introduce restrictions on the political activity of judges. The explanatory memorandum accompanying the adoption of the Act on Judges and Lay Assessors in 2000, states that “since 1989 there have been no specific cases of membership of judges in political parties and movements.”^[2] The memorandum even notes that according to the analysis of the Council of Europe “political party membership is generally allowed if judges abstain from political activities,”^[3] and such regulation is now, for example, applicable in the neighbouring Czechia. The Slovak Parliament, however, decided to prescribe both membership and political activity of judges “to exclude any possible grounds for challenging their impartiality.”^[4] More interestingly, the 2000 legislation also introduced cooling-off periods for judges who run for election, even those who do not get elected. The exercise

of the judicial function suspends on the day of the registration of a judge as a candidate for election. Such suspension continues for three months after election-results if the judge lost, or three months after the end of the term of the elected office.

The suspension plus three-month cooling-off period rule for judges who run for election is still the law today, but it applies only to presidential and local elections. Parliamentary elections have been excluded from the rule in September 2019, and every judge that runs for the European or Slovak Parliament will thus lose her judicial office by default. Under the new legislation, each judge has to issue a written declaration to be able to run as a candidate on the list of a political party or movement in parliamentary elections. The Commission for Election and Control of Financing of Political Parties, or the judge herself, has to deliver to the President a copy of this written statement within five days from the date the receipt. The declaration is in effect a letter of resignation of the judge to the President. The judge who loses her judicial office because of the exercise of the right to be elected can only re-enter the judiciary through the regular route of an open call for applications.

Conclusion: When Superjudges go Extinct

The transit rules for judges to an elected office and back to courts have been occasionally abused and at one time lead to the *de facto* control of the Slovak judiciary by a few “superjudges.” David Kosař defines superjudges as professional judges “who at some point of their career join the executive power and then return to the judiciary.”^[5] Harabin was one such superjudge: a former President of the Supreme Court, Minister of Justice and once President of the Judicial Council. When in power, he exploited his position to harass critics and reward those who were loyal him.^[6] With the change of rules for judges in politics, however, there may be no more Slovak superjudges. Judges now have to resign to run for parliamentary elections and the first one to lose office will likely be Harabin himself by early December at the latest, because political parties have until December 1 to register their candidate lists with the Commission for Election. When he does lose his judicial robe, Harabin will doubtless challenge the rule at the Constitutional Court, and we will get to see whether, for example, the different treatment of presidential and parliamentary elections in law is justified.

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[1] Act on Courts and Judges No. 355/1991 Coll.

[2] Explanatory memorandum to the Act Judges and Lay Accessors No. 385/2000 Coll., accessible at <<https://www.nrsr.sk/dl/Browser/Document?documentId=137232>>

[3] *ibid*

[4] *ibid*

[5] David Kosař, *Perils of Judicial Self-Government in Transitional Societies* (2016 CUP) p248

[6] Harbin's influence has waned over time. He most recently made a transition to social media where he often appears on conspiracy talk shows. Harabin also often attacks his judicial colleagues "juristutes" and resorts to populist messaging and spreading disinformation on his own YouTube channel. Harabin has faced several disciplinary proceedings for his extrajudicial conduct, as judges must even in civic life "refrain from anything that could undermine the respect and dignity of the office of judge or jeopardize confidence in the independent, impartial and fair decision-making of the courts" pursuant to Article 30.1 of the Act on Judges and Accessors. He also faces a disciplinary motion for announcing his new political party while still a judge.